

THE HIGH COURT OF MADHYA PRADESH
WP 9735-2021
(Munnalal Kushwah Vs. State of M.P.)

Gwalior Dt. 05.08.2021

Heard through video conferencing.

Shri Krishna Kartikey, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General for respondent/State.

This petition u/Art. 226 of the Constitution has been filed assailing the order dated 05.05.2021 passed by Collector Ashoknagar vide P/1 by which the Collector asked the petitioner to surrender the vehicle in question which had been released in favour of petitioner after compounding the offence.

The vehicle of petitioner (tractor trolley) bearing No. MP67 AA 2532 involved in illegal transportation of boulders was seized on 17.01.2021. Thereafter on initiation of petitioner, the offence was compounded and the matter was closed by paying compounding fee.

However, the Collector persuaded by the order passed on 18.09.2020 in WP 7695/2015 (PIL), passed the impugned order.

State has filed reply not disputing the fact that vehicle in question was released after compounding the mining offence.

The issue involved herein is no more *res integra* in view of common order passed by this Court in a bunch of petitions

including WP 8613/2020 on 03.08.2021.

This Court in the said common order has held that once mining offence has been compounded and the case stands concluded and custody of vehicle in question has been released in favour of owner, then the Authority can not take recourse to interim order dated 18.09.2020 passed in WP 7695/2015 (PIL).

Relevant portion of said common order is reproduced below for ready reference and convenience:-

“6.7 Learned counsel for petitioners in continuation submits that in certain cases the power of confiscation of vehicle has been exercised in purported compliance of an interim order dated 18.09.2020 passed in PIL WP.7695/2015. In this regard, it is pointed out that the said interim order in PIL was passed in ignorance of the fact of 2019 Sand Rules having come into effect on 30.08.2019 and thus this interim order passed in PIL is passed per incuriam and thus is of no avail to the Collector.”

“11. Reverting to the factual matrix in the instant case and the question of law framed in para 4 (supra), it is seen that in all the cases at hand, the minor mineral involved is of sand and the offence is of illegal transportation of sand. The impugned orders challenged herein are all issued by the Collectors of the concerned districts by invoking Rule 53 of 1996 Rules, when the 2019 Sand Rules were in place.

11.1 Indisputably, the 1996 Rules so far as they relate to minor mineral of sand were repealed by the prevailing 2019 Sand Rules as is evident from the repealing clause Rule 27 which for ready reference and convenience is reproduced below:

*“27. **Repeal.**- The provisions related to mineral sand contained in Madhya Pradesh Minor Mineral Rules, 1996, Madhya Pradesh (Prevention of Illegal mining, Transportation and Storage) Rules, 2006 and Madhya Pradesh Sand Rules, 2018 are repealed to the extent where it does not transgress to these rules.”*

11.2 It is pertinent to mention that the State does not dispute that the expression “.....does not.....” found in the last line of Rule 27 is a typographical error for which the State has made a move to delete the said expression so as to bring the language employed in Rule 27 in conformity with the object behind the said Rule.

11.3 *The said repealing provision in Rule 27 repeals the earlier 1996 Rules, 2006 Rules & 2018 Sand Rules to the extent these rules transgress the 2019 Sand Rules as regards the minor mineral of sand.*

11.4 *Whether the subject matter of confiscation expressly available in the 1996 Rules can be borrowed and used in a case of mining offence registered under 2019 Sand Rules would depend upon the correct interpretation of expression “transgress” found in Rule 27 of 2019 Sand Rules.*

(a) Expression “transgress” defined in different dictionaries of English language is as follows:

Oxford Advanced Learner's Dictionary (New Eighth Edition):

Transgress /verb ~ sth (formal) to go beyond the limit of what is morally or legally acceptable.

Collins Cobuild Advanced Illustrated Dictionary:

Transgress/ Verb-If someone transgresses, they break a moral law or a rule of behaviour.

New Webster's Dictionary And Thesaurus:

Transgress v.t. to overstep a limit; to violate law or commandment; v.i. to offend by violating a law; to sin.

Chambers 21st Century Dictionary (Revised Edition) :

Transgress/ Verb 1. to break, breach or violate (divine law, a rule, etc.) 2. to go beyond or overstep (a limit or boundary).

(b) Meaning of “transgress” is to overstep the limit prescribed. The limit in the present case is the one which is prescribed by the 2019 Sand Rules which does not vest any power of confiscation in the hands of Competent Authority in cases of illegal transportation of sand. Therefore, to exercise the power of confiscation the Competent Authority will have to travel beyond the statutory limits of 2019 Sand Rules and borrow the said power from the repealed Rules i.e. 1996 Rules or the 2006 Rules or the 2018 Sand Rules. This crossing over into a territory foreign to the 2019 Sand Rules would squarely fall within the expression “transgression”.

11.5 *More so, the repealing clause u/R.27 of 2019 Sand Rules eclipses 1996 Rules, 2006 Rules & 2018 Sand Rules qua minor mineral of sand and therefore an eclipsed provision is obviously not available to be borrowed. This Court thus agrees with the contention of learned counsel for the petitioners that after repealing 1996 Rules, 2006 Rules & 2018 Sand Rules, the Competent Authority under 2019*

Sand Rules cannot assume upon itself the power of confiscation which is expressly not provided under 2019 Sand Rules. Doing so would lead to transgression of the statutory limits prescribed by 2019 Sand Rules and this course is expressly prohibited by the repealing clause u/R.27 of 2019 Sand Rules.

11.6 The other submission of learned counsel for the State that to ensure preservation of ecology which is in jeopardy due to rampant and indiscriminate mining, transportation and storage of sand, the repealing clause u/R.27 ought to be read down to permit the Competent Authority to exercise power of confiscation even in cases of illegal transportation of sand, does not impress this Court. It is too far-fetched an argument which if allowed would lead to vesting the Competent Authority with penal provisions of confiscation in the absence of any enabling provision under the 2019 Sand Rules qua cases of illegal transportation of sand. This obviously would result in an incongruous situation where the cases registered under the 2019 Sand Rules would be governed by procedure under the repealed 1996 Rules, 2006 Rules & 2018 Sand Rules.

11.7 More so, this Court further agrees with the submission of learned counsel for the petitioners that confiscation entails serious adverse consequences of penal nature, power in regard to which cannot be assumed by the Competent Authority by implication or reading down of a provision, unless such power is expressly provided in the relevant Statute.

12. Moreover, the 2019 Sand Rules is a special law and therefore takes precedence over the said two rules 1996 Rules & 2006 Rules which fall in the category of general law since both these rules relate to all kinds of minor minerals whereas 2019 Sand Rules relate exclusively to minor mineral of sand.

13. Learned counsel for the petitioners have referred to various decisions which need not be gone into in view of the above discussion.

Conclusion:

14. Consequent upon the aforesaid, this Court has no manner of doubt that the orders of confiscation impugned in all the writ petitions passed by invoking repealed provisions of 1996 Rules are untenable in the eyes of law and therefore have to fall.

15. Consequently, the impugned orders in all the writ petitions under consideration are quashed.

15.1 If the petitioners are in possession of the vehicles in question then they shall retain the possession and if any security/surety had been furnished earlier for retaining the possession of vehicles then the same stands discharged.

15.2 In case, in any of these writ petitions, if the possession of the vehicle is with the respondents then the same shall be released forthwith in favour of the petitioners.”

The ratio of said judgment would apply *mutatis mutandis* for disposal of present case.

In view of above, this petition stands **allowed** and the impugned order dated 05.05.2021 passed by the Collector Ashoknagar vide P/1 stands quashed. If the custody of vehicle is with the petitioner/owner, then it would be retained by him and if any security/surety had been furnished, then the same would stand discharged. If the vehicle is in possession of respondent/Authority, then the same shall be released forthwith in favour of petitioner/owner.

However, release of vehicle shall remain subject to criminal case pending before the court of competent criminal jurisdiction.

(Sheel Nagu)
Judge
05/08 /2021

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(Deepak Kumar Agarwal)
Judge
05/08/2021